



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COSTA-LESSA-MOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, CNR, OLC, MNDC

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and a 2 Month Notice to End Tenancy for Landlord's Use of the Property ("2 Month Notice"), for a monetary order for money owed or compensation for damage or loss, and for an order requiring the landlord to comply with the Act.

The tenant and her legal advocate, landlord EJ, and MR, said by EJ to be the owner of the residential property, attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. In response to my question, EJ stated that he was the spouse of the owner, MR. I must note that at three previous dispute resolution hearings, as will be more specifically referenced herein, MR was not present.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a 2 Month Notice and a 10 Day Notice, monetary compensation, and an order requiring the landlord to comply with the Act?

Background and Evidence

This tenancy, which was determined to have begun in November 2009, has been the subject of at least three other dispute resolution hearings.

Dispute resolution hearing 1:

On the tenant's application, # 249099, seeking an order requiring the landlord to make emergency repairs to the rental unit, an order requiring the landlord to provide services or facilities required by law, for an order allowing a reduction in rent, and a monetary order for money owed or compensation for damage or loss, a hearing was held on October 22, 2013, with only the tenant present. In a Decision dated October 30, another Arbitrator ordered the landlord to:

1. *Hire a professional hazmat team and comply with their directions with respect to mould removal and other orders,*
2. *Hire a professional contractor to inspect the rental unit and follow that contractor's recommendations as to repairs or replacement of plumbing, roofing materials, insulation, drywall, ceiling, flooring and windows in coordination with the hazmat team, and*
3. *Provide the tenant with a copy of the professionals' reports.*

In this Decision, the other Arbitrator also awarded the tenant a rent abatement, and reduced the tenant's monthly rent, from \$800 to \$640, until the landlord complied with the orders and after filing a successful application having the ongoing rent abatement stopped.

Dispute resolution hearing 2:

On the tenant's next application, # 251079, seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), a hearing was held on January 24, 2014, resulting in a Decision dated January 27, 2014, by the undersigned Arbitrator, which cancelled the landlord's 1 Month Notice, for reasons that the landlord attempted to use the Decision of October 30, 2013, requiring him to make repairs against the tenant in seeking her eviction and due to the landlord's insufficient evidence.

The landlord confirmed in the hearing held on January 24, 2014, that he had not made or attempted to make the repairs ordered by the Arbitrator in the Decision of October 30, 2013. For that hearing, the landlord submitted no documentary evidence in support of his 1 Month Notice.

It must be noted that in my Decision of January 27, 2014, the landlord was made aware of the administrative penalties provision under section 94.1(b) of the Act, which allows a monetary penalty for anyone failing to comply with a decision or order of the director of the Residential Tenancy Branch.

Dispute resolution hearing 3:

On the tenant's next application, #251068, seeking cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of the Property, issued by the landlord to the tenant, for an order requiring the landlord to comply with the Act, and for an order allowing a reduction in rent, another Arbitrator issued a Decision, dated March 27, 2014, cancelling the 2 Month Notice, and severing the other issues contained in the tenant's application, dismissing those requests with leave to reapply.

The 2 Month Notice in question at the last previous hearing listed two reasons for seeking the end of the tenancy. More particularly the landlord alleged that he had all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant and he had all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

The other Arbitrator cited that the landlord again argued that he could not make the repairs to the rental unit until the tenant vacated and that he was not required to obtain permits for the type work to be performed on the rental unit.

The tenant, in the hearing on March 27, 2014, claimed that the 1 Month Notice, issued earlier and dealt with in the January 27, 2014, Decision, and the 2 Month Notice seeking her eviction were issued by the landlord in reprisal for seeking enforcement of her "statutory right to live in a properly maintained rental unit under the Act." The tenant further submitted that the landlord acted in bad faith in issuing the 2 Month Notice and that the landlord had not commenced any repairs to the rental unit ordered by the original Arbitrator on October 30, 2014.

In the Decision of March 27, 2014, the other Arbitrator found that the landlord had not acted in good faith in issuing the 2 Month Notice and that the landlord's testimony and evidence failed to meet his burden of proof in supporting the 2 Month Notice, which was his obligation under the Act.

Of note, the Arbitrator in the Decision of March 27, 2014, also mentions that the landlord had not submitted any information with respect to the municipality's position on the issue of permits and approvals and that the landlord has failed to act on the previous orders for repairs.

Dispute resolution hearing 4:

In the present case, the evidence shows that the landlord issued the tenant another 2 Month Notice, dated March 31, 2014, again listing that he had all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

The tenant submitted that the landlord issued this second 2 Month Notice, listing the same reason for ending the tenancy, prior to receiving the March 27, 2014, Decision, of the other Arbitrator, and that it was necessary once again to file an application for dispute resolution seeking cancellation of the second 2 Month Notice. The tenant's application was filed on April 3, 2014.

Since the filing of her latest application, the subject of this hearing, the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 30, 2014, served personally on that date, listing unpaid rent of \$640, which was due on April 1, 2014, according to the landlord.

The tenant then amended her application, seeking cancellation of the 10 Day Notice and I accept her amended application.

The tenant in her present application has also listed a monetary claim of \$1280.00.

In the present hearing, the landlord confirmed filing no evidence and stated that he did not "know why we were here." The landlord again expressed his belief that, presumably, the process of having to defend his Notices to end the tenancy was "ludicrous" as the municipality did not require permits to perform the work ordered on the rental unit. The landlord stated that he did not believe it was his responsibility to substantiate the 2 Month Notice.

In support of his 10 Day Notice, the landlord submitted that the tenant did not pay rent for April 2014.

*Tenant's response-*

In response to the 10 Day Notice, the tenant submitted that as her monthly rent is paid directly to the landlord by the Ministry, the Ministry elected not to send the landlord monthly rent for April, pending the outcome of the hearing taking place on March 27, 2014, as the continuation of the tenancy was in question.

The tenant submitted that the Ministry made the cheque for April's rent payable to the tenant, and thereafter the tenant cashed the cheque and sent the rent, in cash, to the landlord, via courier service. As proof, the tenant submitted a copy of a receipt from the delivery service company, showing delivery of the envelope on March 31, 2014.

The tenant's advocate stated that the landlord's statements that he did not receive rent for April were questionable, as he waited until the last day of April before issuing a 10 Day Notice, for unpaid rent due April 1. In explanation, the advocate pointed out that the landlord has tried many ways to end the tenancy, and that if the tenant truly did not pay rent due on April 1, 2014, the landlord's past behaviour suggests that the Notice would have been issued immediately, not on the last day of the month.

As to the tenant's monetary claim of \$1280.00, the tenant's advocate stated that the tenant was seeking this amount as aggravated damages, due to the actions of the landlord issuing repeated, unfounded notices to end the tenancy. In particular, the advocate pointed out that the latest 2 Month Notice was issued prior to the Decision being issued on the landlord's first 2 Month Notice, listing the same reason.

The tenant's advocate additionally submitted that the tenant was entitled to aggravated damages as the landlord has failed to make any repairs as ordered of him by another Arbitrator on October 30, 2013.

*Analysis*

*2 Month Notice-*

Section 49(6)(f) of the Act stipulates that a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use, as was the reason listed by the landlord on their Notice.

In considering whether the landlord has acted in good faith, a two part test is imposed, namely, that landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

I grant the tenant's application seeking cancellation of the 2 Month Notice to End Tenancy dated March 31, 2014, and it is hereby cancelled, set aside and is of no force or effect. I find the evidence shows that the Notice was served on the tenant with the ulterior motive of avoiding the order to complete repairs to the rental unit. I am satisfied that the landlord has failed to comply with the section 32 of the *Act* and has failed to comply with the Order of an Arbitrator on October 30, 2013.

The landlord confirmed submitting no evidence for this hearing and expressed his contempt for the dispute resolution process, which in this case required the landlord to prove the Notice he issued to the tenant.

I also additionally considered that the matter of the 2 Month Notice was an issue which had previously been decided upon by the Decision issued by another Arbitrator on March 27, 2014, which cancelled the landlord's 2 Month Notice listing the same reason as the 2 Month Notice at issue here, within a few days of the last dispute resolution hearing.

I therefore cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

#### *10 Day Notice-*

In considering the landlord's 10 Day Notice, I took into account that this tenancy has been ongoing since at least 2009, as mentioned in previous Decisions regarding this tenancy, and that the tenant's monthly rent has been paid directly to the landlord by the Ministry.

I also considered that there was no implication that unpaid rent had ever been an issue during this tenancy, and I find it likely the Ministry did withhold the tenant's monthly rent payment for April pending the outcome of the hearing on March 27, 2014.

I also considered that the landlord likely would have issued a 10 Day Notice much earlier than the last day of the month in which rent was due had the rent not been paid by April 1.

I accept the tenant's evidence that she paid her April 2014, rent in cash, via a courier service, as shown by her receipt to the company, and upon a balance of probabilities when considering the landlord's clear intent to evict this tenant and to keep from making the ordered repairs, I accept that the tenant paid her rent for April 2014.

As I have found that the tenant paid her rent for April 2014, I grant the tenant's application seeking cancellation of the 10 Day Notice to end the tenancy due to unpaid rent, dated April 30, 2014, and it is hereby cancelled, set aside and is of no force or effect.

*Monetary Claim for Aggravated Damages-*

Section 16 of the Residential Tenancy Branch Policy Guideline provides that an Arbitrator may award aggravated damages for such issues as physical inconvenience and discomfort, loss of amenities and physical and mental distress, which are not readily quantifiable due to the willful behaviour of another party. Aggravated damages must also be specifically sought.

In the case before me, it is clear from the landlord's conduct that he intends to continue issuing Notices to the tenant and to not make any repairs to the rental unit as ordered by another Arbitrator on October 30, 2013. That Arbitrator found that the rental unit was so deficient as required by section 32 of the Act that the landlord was ordered to hire a professional hazmat team to deal with mould issues and comply with their directions, and to hire a professional contractor to inspect the rental unit to repair or replace damaged plumbing, roofing, drywall, ceiling, flooring and windows.

Rather than follow the orders of that Arbitrator, who, for clarity has been appointed by the Director of the Residential Tenancy Branch ("RTB") to "exercise the director's powers and perform the director's duties and functions under" the Act, I find the landlord's response was to issue three Notices seeking to end the tenancy.

I find the tenant has clearly established an entitlement to an award of aggravated damages as I find the landlord, by continuing to ignore the orders of the Director of the Residential Tenancy Branch, committed continuing egregious violations of the Act by not making the required repairs and therefore recklessly disregarding the health of the tenant.

I accept that the tenant suffered stress and anxiety as a result of the condition of the rental unit, and that the landlord should have reasonably foreseen that the lack of repairs would cause such effects.

I therefore find that the tenant is entitled to the full amounts claimed for aggravated damages in the amount of \$1280.00.

*Request for an order requiring the landlord to comply with the Act-*

As the landlord continues to be obligated to follow the orders of the Arbitrator in the October 30, 2013, Decision, I have not awarded the tenant another order in duplication of the first.

### Conclusion

The tenant's application and amended application have been successful.

The landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property, dated March 31, 2014, has been cancelled and set aside, with the effect that the tenancy continues until it otherwise ends under the Act.

The landlord's 10 Day Notice to End Tenancy for Unpaid rent, dated April 30, 2014, has been cancelled and set aside, with the effect that the tenancy continues until it otherwise ends under the Act.

The tenant has been awarded \$1280.00 for aggravated damages. The tenant is directed to withhold future monthly rent for two months in total in satisfaction of her monetary award. In the alternative, I have issued the tenant a monetary order in the amount of \$1280.00, pursuant to section 67 of the Act, which I have enclosed with the tenant's Decision.

If the tenant is for some reason unable to redeem her monetary award of \$1280.00 by withholding monthly rent equal to this amount, the monetary order must be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if the landlord fails to pay this amount. The landlord is advised that costs of such enforcement are recoverable from the landlord.



This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act* and is being mailed to both the applicant and the respondent.

Dated: May 25, 2014

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Residential Tenancy Branch

